

Message Text

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ACTION SS-30

INFO OCT-01 ISO-00 SSO-00 /031 W
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P 072121Z NOV 73

FM AMEMBASSY NASSAU

TO SECSTATE WASHDC PRIORITY 4858

C O N F I D E N T I A L NASSAU 1692

EXDIS

E. O. 11652: GDS

TAGS: PFOR CPRS BF

SUBJ: EXTRADITION - ROBERT L. VESCO

REF: NASSAU 1683

1. FOLLOWING POINTS ON PROBABLE COURSE OF VESCO EXTRADITION HEARING SUBMITTED BY EMBASSY AS RESULT OF INFORMAL CONSULTATION WITH LOCAL ATTORNEYS (NOT WALLACE-WHITFIELD).

2. NORMALLY, THE TUESDAY HEARING WOULD BE EXPECTED TO GO INTO THE MERITS OF THE US CASE. IT IS, OF COURSE, POSSIBLE THAT THE MAGISTRATE WOULD GRANT A DELAY AT THAT TIME AT THE REQUEST OF EITHER PARTY, BUT IT SEEMS QUITE POSSIBLE THAT VESCO'S LAWYERS WILL WISH TO PRESS AHEAD AT THAT TIME IF ONLY TO PROBE ANY WEAKNESS IN THE US CASE. VESCO'S LAWYERS WILL ALSO PROBABLY FIND IT TO THEIR ADVANTAGE TO PRESS AHEAD IF THEY REALIZE THAT THE US-APPOINTED ATTORNEY WILL NOT HAVE HAD MUCH TIME FOR PREPARATION.

3. IF TUESDAY HEARING DOES PROCEED TO THE MERITS, THE FOLLOWING ISSUES AND DOCUMENTATION COULD BE ESSENTIAL:

(A) THE ORDER IN COUNCIL WHICH APPLIES THE UK EXTRADITION TREATY TO THE BAHAMAS -- ATTORNEY REPRESENTING US INTERESTS SHOULD HAVE A COPY OF THIS ON HAND.

(B) US ARREST WARRANT (NOTE THAT ALL DOCUMENTATION MUST BE CONFIDENTIAL

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PROPERLY CERTIFIED).

(C) BAHAMIAN ARREST WARRANT (THE COURT SHOULD ALREADY HAVE A COPY OF THIS, BUT IT WOULD BE WISE FOR THE ATTORNEY TO HAVE A COPY AS WELL).

(C) THE ORDER SIGNED BY FONMIN ADDERLEY AND THE GOVERNOR GENERAL, WHICH WAS TRANSMITTED TO THE MAGISTRATE ON NOVEMBER 2.

(E) PRIMA FACIE EVIDENCE OF VESCO'S GUILT OF THE CHARGE -- APPARENTLY DEPOSITIONS WILL SUFFICE.

(F) SOME EVIDENCE THAT THE ALLEGED CRIME TOOK PLACE WITHIN US JURISDICTION.

(G) THE ISSUE OF WHETHER THE OFFENSE IS EXTRADICTABLE WILL BE TAKEN UP.

(H) THE ISSUE OF WHETHER THE ALLEGED CRIME IS A POLITICAL OFFENSE, ON ITS FACE OR IN REALITY, WILL BE DISCUSSED -- VESCO'S ATTORNEYS WILL MOST LIKELY CONTEND THAT THE OFFENSE HAS A POLITICAL CHARACTER OR, IF IT DOES NOT, THAT IT IS MERELY A RUSE TO GET VESCO TO THE US TO STAND TRIAL ON ESSENTIALLY POLITICAL CRIMES.

4. AT THE SAME TIME, OR ANY TIME AFTER TUESDAY HEARING, VESCO'S ATTORNEYS MAY APPLY FOR A WRIT OF HABEAS CORPUS TO HAVE VESCO RELEASED WITHOUT BAIL AND GIVEN POSSESSION OF HIS TRAVEL DOCUMENTS. SUCH A MOTION FOR HABEAS CORPUS CAN ALSO BE MADE AT ANY TIME WITHIN 15 DAYS AFTER A DECISION UNFAVORABLE TO VESCO BY EITHER THE MAGISTRATE'S COURT OR COURT OF APPEAL. IN EITHER CASE, IT WOULD GO TO SUPREME COURT, NOT A MAGISTRATE, AND WOULD CONSTITUTE A SEPARATE PROCEEDING CARRIED ON SIMULTANEOUSLY WITH THE EXTRADITION PROCEEDING.

5. ONCE THE MAGISTRATE HANDS DOWN A DECISION ON THE EXTRADITION HEARING, EITHER SIDE MAY APPEAL HIS DECISION TO SUPREME COURT, AND AFTER SUPREME COURT DECISION, TO COURT OF APPEALS (AND, WE ASSUME, ULTIMATELY TO THE PRIVY COUNCIL IN LONDON). ALL APPEAL ACTIONS ARE BASED SOLELY ON THE RECORD OF THE MAGISTRATE'S COURT INCLUDING DOCUMENTATION PRESENTED. THEREFORE CONFIDENTIAL

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IT VITAL THAT THE NECESSARY DOCUMENTATION, UNASSAILABLE IN ITS FORM, BE READY FOR PRESENTATION AT TUESDAY'S HEARING.

6. LOCAL ATTORNEYS SUGGEST THAT VESCO'S ATTORNEYS MAY ATTACK THE EXTRADITION REQUEST ON TWO GROUNDS: THAT IT POLITICAL IN CHARACTER AND/OR THAT PRESENT INDICTMENT IS REALLY ONLY PART OF PREVIOUS INDICTMENT OF LAST SPRING AND SHOULD BE JUDGED ON SAME BASIS AS EARLIER INDICTMENT. THEREFORE, IT IMPERATIVE THAT US DOCUMENTATION SHOW THAT THIS SECOND INDICTMENT IS ENTIRELY SEPARATE FROM THE FIRST, BASED ON DIFFERENT FACTS AND INVOLVING A DIFFERENT OFFENSE, AND THAT IT SHOULD ALSO SHOWN THAT THIS INDICTMENT WAS SEALED BY THE GRAND JURY IN NEW YORK SUBSEQUENT TO OUR FIRST REQUEST FOR EXTRADITION

TO BAHAMIAN GOVERNMENT.

7. EITHER LINE OF ATTACK COULD BE BASED ON ALLEGATION THAT THIS REQUEST FOR EXTRADITION IS NOT MADE IN "GOOD FAITH AND THE INTERESTS OF JUSTICE" UNDER THE EXTRADITION TREATY. A CASE HAS BEEN FOUND (IN RE ARTON, 1896, 1, QUEEN'S BENCH REPORTS, 108, AT PAGE 115) THAT ESTABLISHES, AS A PRINCIPLE OF UK EXTRADITION LAW, THAT THE COURTS MAY NOT CONSIDER AN ATTACK ON THE GOOD FAITH OF AN EXTRADITION REQUEST BY A "FRIENDLY STATE". THIS CASE HOLDS, AND THE PRECEDENT APPARENTLY STILL STANDS, THAT ANY SUCH INVESTIGATION MAY NOT BE UNDERTAKEN BY THE JUDICIAL BRANCH BUT IS SOLELY A MATTER FOR THE EXECUTIVE.

8. IN ADDITION, IT HAS BEEN SUGGESTED TO EMBASSY THAT VESCO MAY MAKE CONSTITUTIONAL ATTACK ON CONTINUED APPLICABILITY OF US-UK EXTRADITION TREATY AFTER BAHAMIAN INDEPENDENCE. THIS ATTACK WOULD CENTER ON EFFECTIVENESS OF GCOB POST-INDEPENDENCE NOTIFICATION TO UNSYG OF CONTINUED VALIDITY OF ALL TREATIES ENTERED INTO ON ITS BEHALF BY UK PENDING REVIEW, AND WOULD ARGUE THAT THIS NOTIFICATION WAS NOT SUFFICIENT TO CARRY OVER SPECIFIC INTERNATIONAL AGREEMENTS WITHOUT PARTICULAR ENUMERATION.

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<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: Z
Capture Date: 11 MAY 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, CRIMES, DOCUMENTS
Control Number: n/a
Copy: SINGLE
Draft Date: 07 NOV 1973
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973NASSAU01692
Document Source: ADS
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: P750023-0561
From: NASSAU
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19731166/abqccegcj.tel
Line Count: 135
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ACTION SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: EXDIS
Reference: NASSAU 1683
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 16 JAN 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <16-Jan-2002 by kelleyw0>; APPROVED <05-Feb-2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EXTRADITION - ROBERT L. VESCO
TAGS: PFOR, CPRS, BF, US, (VESCO, ROBERT L), (ADDERLY)
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005